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4 ABANTE ROOTER AND PLUMBING,  
5 INC.,  
6 Plaintiff,  
7 v.  
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9 TOTAL MERCHANT SERVICES, LLC,  
10 Defendant.  
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12 Case No. 19-cv-05711-EMC  
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**ORDER REQUESTING INFORMATION  
FROM THE PARTIES**

Docket No. 87

15 Before the Court will approve the parties' Notice of Voluntary Dismissal of Action With  
16 Prejudice as to Plaintiff and Without Prejudice as to the Putative Class, Docket No. 87, the Court  
17 requests information from the parties about the scope and nature of the publicity associated with  
18 this putative class action. As Federal Rule of Civil Procedure 23(e) compels: "A class action  
19 shall not be dismissed or compromised without the approval of the court, and notice of the  
20 proposed dismissal or compromise shall be given to all members of the class in such manner as the  
21 court directs." This requirement "is to protect the interests of absent plaintiffs before permitting  
22 dismissal." *Schultzen v. Woodbury Cent. Cnty. Sch. Dist.*, 217 F.R.D. 469, 470 (N.D. Iowa 2003).  
23 Although "the class has not been certified . . . '[t]his requirement [to act as the guardian of the  
24 rights of class members still] applies.'" *Id.* (citing *Diaz v. Trust Territory of Pacific Islands*, 876  
25 F.2d 1401, 1407 (9th Cir. 1989)); *see also Tomblin v. Wells Fargo Bank, N.A.*, No. 13-CV-  
26 04567-JD, 2014 WL 5140048, at \*2 (N.D. Cal. Oct. 10, 2014) (noting that "this Court will follow  
27 Diaz" to evaluate the proposed dismissal as "this approach is consistent with Rule 23(e) as it exists  
28 today"). Thus, in order to ensure that the interests of the absent plaintiffs are appropriately

1 safeguarded, and to safeguard against any misplaced reliance on this suit and any consequential  
2 tolling of the statute of limitations, the parties shall file by August 20, 2021, a description of the  
3 scope of publicity and nature of the information shared with the public and putative class members  
4 about this case.

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6 **IT IS SO ORDERED.**  
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8 Dated: August 13, 2021  
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11 EDWARD M. CHEN  
United States District Judge  
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